IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.A No.777-DB of 2005

DATE OF DECISION: August 24, 2009

BRAHMA NAND ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MR. JUSTICE MOHINDER PAL.

PRESENT: MS. ANJU ARORA, ADVOCATE FOR THE APPELLANT.
MR. PRADEEP SINGH PUNIA, ADDL.A.G., HARYANA.

ASHUTOSH MOHUNTA, J.

The accused-appellant Brahma Nand has filed this appeal challenging the judgement dated 8.9.2005, passed by the Addl. Sessions Judge, Bhiwani vide which he has been convicted under Section 302 IPC for having committed the murder of his wife Dhanpati and order of sentence dated 9.9.2005, vide which he has been ordered to undergo R.I. for life and to pay a fine of Rs.2000/- and in default of payment of fine to further undergo R.I. for 2 months.

The accused Brahma Nand was married to Dhanpati (deceased). They had two sons, namely, Bhim Singh and Bajrang. The case of the prosecution in brief is that on 8.6.2003, Bhim Singh filed a complaint (Ex.PC) before Raghubir Singh SI/SHO (Ex.PW12) wherein he stated that his father Brahma Nand was of suspicious nature and used to accuse his mother Dhanpati of having illicit relations with her elder son Bajrang. On

19.5.2003, his father again leveled allegations against Dhanpati that she is having illicit relations with Bajrang and on this account a dispute arose in the house. On the next day, Bhim Singh called his maternal uncle Satpal who made Brahma Nand to understand that the allegations being leveled against his son Bajrang are absolutely false and that he is trying to ruin the entire house by leveling such frivolous allegations. Despite Satpal trying his level best to make Brahma Nand to understand that there was no truth in the allegations, the accused-appellant continued to beat Dhanpati almost everyday. On 8.6.2003, Bhim Singh telephoned his maternal uncle to come and make the accused understand. On receiving the telephone call, Satpal reached their Dhani in the field at about 11/11.30 a.m. In the presence of other family members he made Brahma Nand to understand that by leveling wild allegations against Dhanpati he would disintegrate the family. At that time Dhanpati took the buffaloes to the water pond in the village and all other started taking tea at the house. It was further stated by Bhim Singh that his father started murmuring and went towards the village with a lathi. The complainant alongwith his brother Bajrang and his maternal uncle Satpal suspected that his father could do something wrong with his mother as he was in an angry mood. Therefore, they also started towards village at once. When they reached near the fields of Nand Lal, they saw that their buffaloes were roaming around in the fields and at that time they heard their mother Dhanpati crying 'Maar Diya-Maar Diya'. When the complainant reached near the place of occurrence, he saw that his father Brahma Nand had wrapped a chunni around the neck of Dhanpati and was pressing one end of chunni with his leg. He was also giving lathi blows thrust-wise on the face, eyes, mouth and ear of his mother. Because of the lathi blows, the

face of his mother was splattered with blood and Dhanpati succumbed to her injuries in his presence. The entire incident was also witnessed by Bajrang and Satpal. The matter was reported on 8.6.2003, at 7.30 p.m. and on the basis of the report, formal FIR No.81 (Ex.PA/2) under Section 302 IPC was registered against the appellant at Police Station Tosham.

The case was investigated by PW12 SI Raghubir Singh who prepared the site plan (Ex.PL) and inquest proceedings (Ex.A/2) were conducted under Section 174 Cr.P.C. The accused was also apprehended on the same day and he suffered a disclosure statement (Ex.PG). Pursuant to that a lathi, a shirt and a pyjama were recovered and the same were sent for examination.

After completion of the investigation, the accused was challaned. The accused was charged under Section 302 IPC and he claimed trial as he pleaded not guilty.

In order to prove its case, the prosecution examined as many as 12 witnesses, out of whom PW9 Bhim Singh, who was the complainant and his brother PW10 Bajrang were declared hostile. Dr. Hari Singh, Medical Officer, General Hospital, Bhiwani who conducted the post mortem examination on the dead body of Dhanpati was examined as PW1. PW11 Satpal who was the maternal uncle of the complainant and was an eye witness to the entire occurrence had supported the case of the prosecution. SI Raghubir Singh who conducted the investigation and had apprehended the accused deposed as PW12.

After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. and in his statement the accused denied the allegations leveled against him and pleaded innocence. It was stated by

him that a false case has been foisted against him at the instance of his brother-in-law Satpal. However, no evidence was led by the accused.

The trial Court, primarily, by relying upon the evidence of PW11 Satpal, who was an eye witness to the entire occurrence, which was duly corroborated by the injuries suffered by the deceased, convicted the accused Brahma Nand under Section 302 IPC and sentenced him to undergo imprisonment for life.

Counsel for the appellant has argued that the complainant Bhim Singh, PW9 as well as his brother Bajrang, PW10 who were alleged to be the eye witnesses of the entire occurrence have not supported the case of the prosecution and hence it would not be safe to rely upon the testimony of Satpal, PW11.

Both PW9 Bhim Singh and PW10 Bajrang were declared hostile. It was natural for them to save their father Brahma Nand and thus, have resiled from their statements. The FIR was lodged on the basis of report (Ex.PC) made by PW9 Bhim Singh. He had reported the matter on the date of occurrence itself, i.e. on 8.6.2003, and had categorically named his father Brahma Nand of having committed the murder of Dhanpati. In these circumstances, the testimony of remaining eye witness PW11 Satpal has to be examined with great care and caution. PW11 Satpal has categorically stated that the accused used to level allegations against his wife Dhanpati for having illicit relations with her son Bajrang. He had stated that about 18-20 days prior to the date of occurrence, Brahma Nand told him to take Bajrang away otherwise, he would kill Bajrang. Thereafter, Bajrang was taken away by him. On the date of occurrence, he had come alongwith Bajrang and his wife to village Nigana at the house of the

accused where he was told that Dhanpati had taken the buffaloes to the pond. He alongwith complainant and Bajrang followed Dhanpati and found that the accused had wrapped a chunni/parna around her neck, which he was pressing from one leg and was giving lathi blows on her face thrust-wise. On seeing them, the accused ran away. He had further stated that his nephew Bhim Singh reported the matter to the Police.

The defence has not been able to create any dent in the statement of PW11 Satpal. There was no reason for him to falsely implicate the accused who was his brother-in-law.

The statement of PW11 Satpal is also supported by the medical evidence. PW1 Dr. Hari Singh, Medical Officer, General Hospital, Bhiwani conducted the post mortem examination on the dead body of the deceased Dhanpati and he found the following injuries on her person:-

"*1. There was a lacerated wound on right maxilla bone size was 2.5 x 2 c.ms. and bone deep.*

2. A lacerated wound on right frontal bone, size was 6 x 4 c.ms. and bone deep. There was a depressed fracture of underlying bone.

3. A lacerated wound above left eye-brow, size was 4 x 1.5 c.m.

4. A lacerated wound on left frontal bone, size was 5 x 2 c.m. into bone deep and there was depressed fracture of underline bone.

5. A lacerated wound on the outer edge of left eye 2.5 x 1 c.m. into bone deep.

6. A lacerated wound on maxilla 2.5 x 2 c.ms. into bone

deep with fracture of the bone.

7. *A lacerated wound of the lower lip at the middle 3 x 1.5 c.m. with fracture of underlying bone.*

8. *A lacerated wound on the back of right elbow 6 x 3.5 c.m. into bone deep.*

9. *A lacerated wound on right side of the mandible below left ear 2 x 7.5 c.m. in size.*"

Dr. Hari Singh deposed that there was depressed fracture of both frontal bones and fracture of mandible and maxilla was also present. He opined that the cause of death was due to injuries on the vital organ leading to haemorrhagic shock and death, which were ante mortem in nature. The Doctor opined that death could be caused by a lathi. A perusal of the ocular account as given by PW11 Satpal is fully supported by the medical evidence. Satpal PW11 has stated that the injuries were caused on the mouth, face, ear and neck of the deceased, which find corroboration from the medical evidence.

A perusal of the facts in the present case shows that the complaint (Ex.PC) on the basis of which formal FIR was registered against the accused, was lodged by Bhim Singh, son of the accused and the deceased. There was no reason why the appellant would be implicated by his own son and has brother-in-law. In fact, the accused would be the last person to be implicated in this case if he had not committed the crime. Apart from the above, the FSL report (Ex.PF) shows that human blood was detected on the clothes of the accused, and the deceased and lathi. This also lends credence to the fact that murder of Dhanpati was committed by the appellant.

Keeping in view the entire facts and circumstances of the case, we are of the considered opinion that it was the accused Brahma Nand who had committed the murder of his wife Dhanpati. He has rightly been held guilty by the trial Court and has been convicted under Section 302 IPC and sentenced to undergo R.I. for life.

For the foregoing reasons, we find no merit in this appeal and the same is dismissed.

(ASHUTOSH MOHUNTA)
JUDGE

August 24, 2009
Gulati

(MOHINDER PAL)
JUDGE